IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12142 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

INDIAN AIRLINES LTD. - Petitioner(s)

Versus

UNION OF INDIA THR' SECRETARY & 2 - Respondent(s)

==========

Appearance :

MR VIMAL M PATEL for Petitioner No(s).: 1.

DS AFF.NOT FILED (N) for Respondent No(s).: 1.
NOTICE SERVED BY DS for Respondent No(s).: 2.
MRS SANGEETA N PAHWA for Respondent No(s).: 3.

==========

CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 18/07/2005

ORAL JUDGMENT

Rule. Ms. Sangeeta Pahwa, learned advocate waives service of Rule on behalf of respondent No.3. In this petition under Article 226 of the Constitution of India, the petitioner management has challenged the legality and validity of the order

passed by the respondent No.1 appropriate Government dated 23rd August 2004 in referring the dispute to the Industrial Tribunal for adjudication with regard to demand of the respondent for reinstatement of the concerned workman.

2. It appears from the record that the respondent No.3 Gujarat Mazdoor Panchayat raised industrial dispute in respect of 10 employees and approached the Assistant Labour Commissioner (Central). It appears from the record that conciliation proceedings were initiated by the Assistant Labour Commissioner, Vadodara and the same were conducted on 12th August 2003. As the dispute was not settled the Assistant Labour Commissioner (Central) submitted Failure Report to the appropriate Government vide letter dated 19th August 2003. The appropriate Government by its order dated 24.12.2003 declined to refer the dispute to the Industrial Tribunal for its adjudication. It appears from the record that after the conciliation proceedings were concluded by the Assistant Labour Commissioner the respondent No.3 made a complaint to the Assistant Labour Commissioner that the aforesaid workmen are not provided work with effect from 14th August 2003. It also appears from the record that the Assistant Labour Commissioner (Central), Vadodara vide his communication dated 9.10.2003 called upon the petitioner to offer comments with regard to refusal to provide work to the aforesaid workmen with effect

from 14th August 2003 failing which legal action would be taken for violation of Section 33(2) of the I.D. Act. It also appears from the record that the petitioner replied to the said communication also. Feeling aggrieved and dissatisfied with the order passed by the appropriate Government dated 24.12.2003 in declining to refer the dispute regarding regularization of the aforesaid workmen to appropriate Labour Court/Industrial Tribunal, the respondent No.3 had preferred Special Civil Application No. 3410 of 2004 before this Court and the learned Single Judge of this Court [Coram: Mr. Akil Kureshi, J.] by judgment and order dated 28.6.2004 allowed the Special Civil Application by quashing and setting aside the order passed by the appropriate Government dated 24.12.2003 and directing the respondent No.1 appropriate Government to consider the matter afresh keeping the observations made in the judgment and decide whether the said dispute could be referred for adjudication or not. It was also pointed out at that time that in the interrugnum period the workmen are already dismissed from service. On this submission this Court observed that it will be open for the petitioner to take recourse to such legal remedy as may be available to him. Thereafter on remand the appropriate Government has taken a decision by order dated 23rd August 2004 and referred the dispute and the demand of the respondent No.3 not only with regard to regularization but also with regard to reinstatement. The dispute referred reads as under:

> "Whether the demand of the Gujarat Mazdoor Panchayat for reinstatement /regularization of (1) S/Shri Santosh D. Chalke (2) Iqbalhusain S. Gohil (3) Bhailalbhai D. Rathod (4) Rajakbhai Y. Shaik (5) Kanubhai D. Parmar (6) Devidas N. Dhabade (7) Sanjaykumar D. Patanbadia (8) Wasimbhai A. Shaikh (9) Bharatbhai D. Patil (10) Jasubhai K. Rathod is justified ? If so, to what relief are the concerned workmen entitled and from what date ?"

Feeling aggrieved and dissatisfied with the order passed by the appropriate Government dated 23rd August 2004 insofar as it referred the dispute relating to demand for reinstatement, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Vimal Patel, learned advocate appearing on behalf of the petitioner management has vehemently submitted that in absence of any conciliation and/or failure report by a Conciliation Officer the appropriate Government is not justified in referring the dispute/demand of the respondent No.3 with regard to reinstatement also. It is further submitted that the conciliation and the failure report were with regard to regularization of the concerned workmen only and therefore it was not open for the appropriate Government to refer the dispute with

regard to reinstatement also. It is also further submitted that in fact when this Court allowed the Special Civil Application No. 3410 of 2004 it has also pointed out with regard to alleged termination of the concerned workmen still there was no direction by this Court to consider the dispute with regard to reinstatement and/or alleged dismissal and this Court only observed that if that be so it will be open for the petitioner to take recourse to such legal remedy as may be available to him. Therefore it is submitted that this Court was conscious about the alleged dismissal/termination still no direction was issued by this Court and the appropriate Government was required to reconsider its earlier decision with regard to demand of regularization only. Hence it is requested to allow the present Special Civil Application.

4. Ms. Sangeeta Pahwa, learned advocate appearing for respondent No.3 has opposed the present Special Civil Application. It is submitted that during the pendency of conciliation proceedings the petitioner refused to offer work to the concerned workmen and thus there was a breach of Section 33(2) of the Industrial Disputes Act, 1947, and therefore the appropriate Government is justified in referring the dispute/demand with regard to reinstatement also. According to her as the demand with regard to

regularization and reinstatement both are as such interconnected it is requested not to exercise the power under Article 226 of the Constitution of India considering the conduct on the part of the petitioner and dismiss the present Special Civil Application.

5. It is not in dispute that the demand notice was with regard to regularization of the services of the concerned workmen for which conciliation proceedings were initiated and there was a failure report submitted by the Conciliation Officer to the appropriate Government. The appropriate Government by order dated 24.12.2003 refused to refer the dispute which came to be challenged by the respondent No.3 by way of Special Civil Application No. 3410 of 2004 and the learned Single Judge of this Court allowed the Special Civil Application by quashing and setting aside the order dated 24.12.2003 in refusing to refer the dispute with regard to regularization to the appropriate Labour Court/Industrial Tribunal and directed the respondent No.1 appropriate Government to take an appropriate decision afresh considering the observations made in the said order. Under the circumstances on remand the appropriate Government was required to reconsider its decision with regard to demand of regularization only. It is also required to be noted that at the time of deciding the aforesaid Special Civil Application it was specifically pointed out by the respondent No.3 with

regard to alleged termination and not providing work. The learned Single Judge of this Court observed that it will be open for the petitioner to take recourse to such legal remedy as may be available to him and that this Court did not think it fit to direct the appropriate Government to consider the question with regard to reinstatement also. In such circumstances and in view of the aforesaid facts it was not open for the appropriate Government to refer the dispute with regard to demand of the concerned workmen with regard to reinstatement also. It is also required to be noted as stated above that in fact there was no conciliation and failure report by the Conciliation Officer with regard to demand for reinstatement.

5.1. Under the circumstances, the impugned order, passed by the appropriate authority referring the dispute/demand of the respondent No.3 for reinstatement of the concerned workmen whose names have been mentioned herein above, is required to be quashed and set aside.

6. For the reasons stated herienabove, the petition succeeds and the order passed by the appropriate Government dated 23rd August 2004, insofar as it refers the dispute/demand of the respondent No.3 for reinstatement of the concerned workmen, is hereby quashed and aside. However, it is made clear that it will be open for the concerned workmen to

initiate conciliation proceedings to raise demand for reinstatement and challenge their alleged dismissal before the Conciliation Officer and the appropriate Government which may be dealt with in accordance with law and on merits. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

RMR.